



PATENT

Our Docket: Amir/001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of  
Amir and Amir

Serial No.: 10/066,753

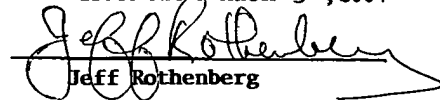
Filed: February 6, 2002

For: COSMETIC REPAIR USING  
CARTILAGE PRODUCING CELLS)  
AND MEDICAL IMPLANTS  
COATED THEREWITH

) Group Art Unit: 1654

) Examiner: S. Coe

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Jeff Rothenberg

November 3, 2004  
Date

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

DECLARATION UNDER 37 U.S.C. SECTION 1.131

Sir:

I, Abraham Amir, declare as follows:

1) I am an inventor named in the above-identified  
patent application.

2) I am also a medical doctor, specializing in plastic  
and cosmetic surgery.

3) I understand that in the latest Office Action,  
claims 1 and 3 to 8 are rejected as allegedly obvious based,  
in part, on Brittberg et al., New Eng. J. of Med., 331:889-  
895 (1994). Brittberg teaches using transplanting isolated  
chondrocytes to treat deep cartilage defects in the knee.  
The Office Action takes the position that it would have

been obvious to one skilled in the art to use the formulation taught by Brittberg to cosmetically repair a skin contour irregularity such as the one claimed in the subject invention.

4) I have reviewed Brittberg and it does not obviate the subject invention. Brittberg teaches treating cartilage defects in the knee. A surgeon, such as myself, reading Brittberg would not have been motivated to take this formulation used in the knee and apply it for use at a skin site such as the one of the subject invention for two reasons.

5) Firstly, the knee is a natural site for cartilage producing cells. This is why cartilage is naturally found at this site. By contrast, the skin is not a natural site for cartilage producing cells. For example, while the knee has the natural nutritional, fluid and oxygen environment to promote cartilage production from cells, the skin has a different environment. Therefore, one would not have been motivated to take the composition of Brittberg and apply it for skin use.

6) Secondly, applying proliferating cells at a skin site requires a great deal of care and control. As stated in the subject application, care should be exercised not to overfill the contour irregularity because the cells being introduced to the site can grow and proliferate. Page 18, lines 1-2. Such care and control need not be exercised at a deep knee site such as the one described by Brittberg, where overgrowth and overproliferation of cartilage is not

Declaration

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a concern because, unlike a skin site, the composition taught by Brittberg is injected into limited space with solid borders. Thus, one would not have been motivated to use the composition of Brittberg at a skin site. A skin site has undefined borders and, therefore, one would fear of overgrowth and overproliferation. This is not a concern at a knee site.

I declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willfully false statements are punishable by fine or imprisonment under 18 U.S.C. Section 1001 and that any such statement may jeopardize the validity of the subject application or any patent issued thereon.

X A. Amir  
Abraham Amir

28 Oct. 2004  
Date